

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIE COUNTY ENVIRONMENTAL
COALITION, PENNENVIRONMENT,
INC. and THE GAIA DEFENSE LEAGUE,
Plaintiffs

v.

MILLCREEK TOWNSHIP SEWER
AUTHORITY AND MILLCREEK
TOWNSHIP,
Defendants

CIVIL ACTION NO. 05-59 ERIE
ELECTRONICALLY FILED
JUDGE COHILL

**SECOND SUPPLEMENT TO CONCISE STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF
MILLCREEK TOWNSHIP SEWER AUTHORITY AND MILLCREEK TOWNSHIP**

Defendants MILLCREEK TOWNSHIP SEWER AUTHORITY and MILLCREEK TOWNSHIP, by and through their attorneys, MacDonald, Illig, Jones & Britton LLP, hereby file this Second Supplement to Concise Statement of Material Facts in Support of Motion for Summary Judgment on Behalf of Millcreek Township Sewer Authority and Millcreek Township, pursuant to LR 56.1.B.1 of the Local Civil Rules of the United States District Court for the Western District of Pennsylvania:

209b. It has been nearly 42 months (September 2004 - March 2008) since there has been an overflow at any of the following three manhole locations: (1) 51st and 52nd Streets and Zimmerly Road; (2) Larchmont and Beaver Streets; and (3) Church and Patton and Pershing Streets. (Fourth Supp. Aff. of G. Riedesel, ¶ 1).

245f. MTSA and Millcreek now have inspected all of the areas that are tributary to the manholes at all three locations and have thus completed the Inflow and Infiltration ("I&I") Program outlined in the 2003 Kearsarge Consent Order and Agreement ("2003 COA"). (Fourth Supp. Aff. of G. Riedesel, ¶ 3).

245g. MTSA and Millcreek have eliminated a total of 110 illegal stormwater connections that were impacting the sanitary sewer system during storm events. (Fourth Supp. Aff. of G. Riedesel, ¶ 4).

245h. MTSA and Millcreek have repaired 16 township lateral sanitary sewer lines that were impacting the sanitary sewer system during storm events. (Fourth Supp. Aff. of G. Riedesel, ¶ 5).

245i. Summit Township has provided MTSA and Millcreek with records documenting a total of 168 repairs to manholes and private sewer connections within Summit Township that were impacting the sewer system tributary to the Kearsarge Pump Station during storm events. (Fourth Supp. Aff. of G. Riedesel, ¶ 6).

247a. It is estimated that on average, each of the 294 system repairs or removals of illegal connections has reduced average flows by at least 720 gallons per day ("GPD")) for a total flow removal of 211,700 gallons per day or 77.2 million gallons per year ("MGY"). (Fourth Supp. Aff. of G. Riedesel, ¶ 7).

247b. In addition, as a result of inflow and infiltration discovered during the I&I Program implemented pursuant to the 2003 COA, Millcreek completed the replacement of the Glade Drive Sanitary Sewer in 2007. (Fourth Supp. Aff. of G. Riedesel, ¶ 8).

247c. The replacement of the Glade Drive Sanitary Sewer alone saves an estimated 97,800 GPD and approximately 35.7 MGY in flow. (Fourth Supp. Aff. of G. Riedesel, ¶ 9).

247d. The replacement of the Glade Drive Sanitary Sewer alone also reduces instantaneous peak wet weather flows by an estimated 1.0 million gallons per day ("MGD"). (Fourth Supp. Aff. of G. Riedesel, ¶ 10).

247e. The combined effect of all of these projects is an estimated reduction of 1.5 MGD in instantaneous peak flows in the sewer system tributary to the manholes and the Kearsarge Pump Station. (Fourth Supp. Aff. of G. Riedesel, ¶ 11).

247f. The sanitary sewer system repairs performed by Millcreek, MTSA and Summit Township combined with the Glade Drive Sanitary Sewer replacement are estimated to result in a 112.9 MGY reduction in flow to the Kearsarge Pump Station. (Fourth Supp. Aff. of G. Riedesel, ¶ 12).

247g. These estimated flow reductions are supported further by actual flow data collected at the Kearsarge Pump Station for 2007 that identified a reduction in flow of 143 MGY as compared to historical averages. (Fourth Supp. Aff. of G. Riedesel, ¶ 13).

317h. The work relating to the construction of the overflow retention tanks and accompanying improvements to the Kearsarge Pump Station were substantially completed and the overflow to Walnut Creek was disconnected on March 19, 2007. (Fourth Supp. Aff. of G. Riedesel, ¶ 14).

317i. In approximately one year since the overflow retention tanks have been completed, the tanks have functioned properly and there have been no overflows to Walnut Creek. (Fourth Supp. Aff. of G. Riedesel, ¶ 15).

317j. Millcreek and MTSA have completed all of the corrective measures required under the 2003 COA with PADEP, including connecting a subdivision of 16 homes with failing septic systems to the MTSA public sewer system, conducting a Special Study, conducting

extensive I&I investigations and removals in the area tributary to the Kearsarge Pump Station, obtaining permitting for and constructing of the overflow retention facilities at the Kearsarge pump station, and removing of the overflow at the Kearsarge Pump Station. (Fourth Supp. Aff. of G. Riedesel, ¶ 16).

317k. The 2003 COA will terminate 24 months after the March 19, 2007 date of the removal of the overflow (March 19, 2009) provided there have not been any post-removal overflow events from areas tributary to the Kearsarge Pump Station. (Fourth Supp. Aff. of G. Riedesel, ¶ 17).

317l. Pursuant to the 2003 COA, Millcreek and MTSA have conducted extensive I&I investigations and repairs and completed substantial system upgrades including construction of an overflow retention facility at the Kearsarge Pump Station. (Supp. Aff. of B. McGrath, ¶ 3).

317m. Pursuant to the 2003 COA Millcreek and MTSA also ensured that a subdivision of 16 homes with failing on-lot septic systems was connected to the Millcreek/MTSA public sewer system to prevent degradation of Walnut Creek from the failing on-lot systems. (Supp. Aff. of B. McGrath, ¶ 4).

Respectfully submitted,

s / Mark J. Shaw

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Dated: April 22, 2008

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2008, the foregoing Second Supplement to Concise Statement of Material Facts in Support of Motion for Summary Judgment on Behalf of Millcreek Township Sewer Authority and Millcreek Township was filed electronically with the Clerk of Court using the Electronic Case Filing system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and constitutes service of this filing under Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

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